

OFFICE OF MAYOR VIRG BERNERO 124 W. MICHIGAN AVENUE – NINTH FLOOR LANSING, MI 48933

TO: ALL OFFICERS, EMPLOYEES, AGENCIES, BOARDS, AUTHORITIES,

AND DEPARTMENTS OF THE CITY OF LANSING

RE: EXECUTIVE ORDER 2008-03 – REQUIRING AGREEMENT IN

CONSIDERATION OF DEVELOPMENT INCENTIVES TO INCLUDE

PERFORMANCE AND REPORTING REQUIREMENTS AND

PREFERENCE FOR LANSING-BASED FIRMS AND EMPLOYEES

In the last several years the Administration has aggressively pursued an economic development strategy that promotes new investment, the expansion of the City's tax base and the creation of new jobs. To achieve these goals, the City offers a variety of economic incentives that are designed to facilitate the expansion of existing businesses and the location of new businesses within the City, as well as the rehabilitation of obsolete structures and the reuse of environmentally contaminated sites. Economic incentives typically do not provide City funds to developers or businesses, but rather encourage new investment and job creation in the City that would not have occurred without the incentive.

Economic incentives are offered with the expectation that the development project undertaken will result in direct benefits to the City. To ensure that these benefits are in fact realized, it is important to formally establish performance expectations and reporting requirements related to the approval of economic incentives. The approval of incentives must be a transparent and public process that produces a clear agreement between the City and the project developer regarding the responsibilities of both the City and the developer.

It is also reasonable to expect that the developer will make reasonable efforts to hire contractors and subcontractors that are Lansing-based firms, and that the developer and any such contractors or subcontractors will make reasonable efforts to hire Lansing residents and to procure goods and services from Lansing-based firms.

Therefore, pursuant to the direction and mandate given to me by the people of the City of Lansing, as expressed in the City Charter, I hereby issue the following Order:

- 1. To achieve the objectives described above, the Lansing Economic Development Corporation (LEDC) shall require all parties to any development receiving economic incentives to enter into an Agreement in Consideration of Development Incentives ("Agreement"). The Agreement shall specify reporting requirements, performance expectations and preferences for Lansing-based firms and City residents in the hiring of employees, contractors and subcontractors, and in the procurement of goods and services by the project developer.
- 2. The Agreement shall substantially conform to the following template:

AGREEMENT IN CONSIDERATION OF DEVELOPMENT INCENTIVES

THIS AGREEMENT in Consideration of Development Incentives ("Agreement") is made and entered this _____day of ______, ____, by and between the City of Lansing, Michigan, a Michigan municipal corporation ("City"), and ______, a Michigan Corporation ("Applicant"), (collectively the "Parties");

I. STATEMENT OF PURPOSE:

The City of Lansing welcomes new investment and the creation of new jobs. To achieve these goals, the City offers a variety of economic incentives that are designed to facilitate the expansion of existing businesses and the location of new businesses within the City, as well as the rehabilitation of obsolete structures and the reuse of environmentally contaminated sites.

Economic incentives typically do not provide City funds to developers or businesses, but rather encourage new investment and job creation in the City that would not have occurred without the incentive. The purpose of this Agreement is to establish performance expectations, reporting requirements, and preferences for Lansing-based firms, resident employees and union employees in hiring, contracting, subcontracting and procurement related to the acceptance of economic incentives by the Applicant.

Economic incentives are beneficial to both the City and the Applicant. The approval of incentives must be a transparent and public process that produces a clear agreement between the Parties regarding the responsibilities of both the City and the Applicant. This public process does not end with the approval of the incentive, but continues until the commitments made by the Applicant under this Agreement are met.

II. DEFINITIONS

As used in this Agreement, the definitions herein shall be the mutually understood meaning of the following terms:

- "Incentive" means a reduction in City taxes levied on real or personal property, or other financial benefit to Applicant, for a limited number of years as specified in this Agreement, and which may include, but is not limited to, those tax reductions or other financial benefits authorized by the Obsolete Property Rehabilitation Act (Public Act 146 of 2000, as amended), Neighborhood Enterprise Zone Act (Public Act 147 of 1992, as amended), Brownfield Redevelopment Financing Act (Public Act 381 of 1996, as amended), Plant Rehabilitation and Industrial Development Districts (Public Act 198 of 1974, as amended) and the New Personal Property Tax Exemption authorized by Public Act 328 of 1998.
- "Lansing-based firm" means an incorporated business entity that owns or leases an office, warehouse, distribution center, or wholesale or retail store located within the corporate limits of the City of Lansing.
- "Full-time Equivalent Employees (FTE)" means a combination of full-time and part-time employees that represents all employees as a comparable number of full-time employees.

III. RECITALS:

A. APPLICANT/PROJECT INFORMATION

Name of Project:	
Business Name of Applicant (if applicable):	
Name of Parent Company (if applicable):	
List Managing Partner and all other Partners, including percentage partner:	ownership interest of each
	%
	%
	%
List City incentive(s) and number of years requested for each:	
	Years
	Years

Yea	ırs
Yea	ırs
List all Federal, State or other incentives and their estimated value that may be part of this project:	
Name of Financial Institution(s) funding the Project (if unavailable upon execution of this Agreement, Applicant agrees to furnish commitment letter(s) from lending institution(s) to the LEDC when available):	he
Estimated number of new, permanent full-time equivalent employees (FTE) upon Project Completion (if applicable):	
FTE	
Estimated total investment in real and personal property, including acquisition and constructions, upon Project Completion:	tion
\$	
Estimated average hourly wage or annual salary of new, permanent employees (if applicable	'e):
\$	
B. APPLICANT ACCEPTANCE OF NOTICE AND REPORTING REQUIREMENT AND LOCAL PREFERENCES IN HIRING, PROCUREMENT OF GOODS AND SERVICES, CONTRACTING AND SUBCONTRACTING	
(initial spaces below to indicate acceptance)	
Applicant agrees to notify the LEDC and City Assessor of any and all partner changes during the term of any incentives approved for the Project.	ership

Applicant agrees, and may be required to provide written documentation at the request of the LEDC, to consider and hire as many Lansing residents and Lansing-based firms, including but not limited to consultants, suppliers, contractors and sub-contractors, as reasonably possible.
Applicant agrees, and may be required to provide written documentation at the request of the LEDC, to make good faith efforts to hire contractors and subcontractors that employ union labor when economically feasible.
Applicant agrees that all employees, contractors and sub-contractors related to this Project will pay all City individual income tax.
Applicant agrees to report annually to the City Treasurer all gross individual income taxes paid and current residential addresses of all employees.
Applicant agrees that all contractors and sub-contractors will report annually to the City Treasurer all gross individual income taxes paid and current residential addresses of all employees.
C. LEDC STAFF/ADMINISTRATION RECOMMENDATION
Name of Lead Staff Person:
Revenue currently paid to the City by the site or project: \$
Estimated total revenue to the City upon Project Completion: \$
Estimated total value of City Incentive(s): \$
Estimated total new net revenue to the City: \$
Staff Comments (indicate reasons for providing Incentive and describe any additional value to the City as a result of approval):
Project Timeline:
Have all appropriate City Incentive fees been received? VES NO

Staff Recommendation:	APPROVE	DENY	MODIFY					
(if DENY or MODIFY please explain in space provided below)								
Administration Recommendation:	APPROVE	DENY	MODIFY					
(if DENY or MODIFY please explain in S	(if DENY or MODIFY please explain in space provided below)							
T.	D. ADDITIONS:							
1. Applicant, in seeking local legis City as more fully set forth herein.	slative approval, has	made certain rep	presentations to the					
2. The Applicant has applied for Incentive for the purpose of [insert project description] ("Project"). The Project is expected to hire at least or retain at least new full-time equivalent employees (FTE) and requiring a total investment in real property of at least and personal property of at least \$, when completed.								
3. The Applicant has supplied to the LEDC all application and supporting documentation, including a list of all partners of the Applicant with an ownership interest in the Project, which in turn has been forwarded to the City prior to the approval of the Incentive.								
4. The Applicant has provided to the LEDC detailed information including wage and benefit information for the Project and new, permanent full-time equivalent employees (FTE) expected to be hired or retained as a result of the Project, which in turn has been forwarded to the City prior to approval of the Incentive.								
5. The Applicant and the City desire to enter into an agreement whereby the Applicant and City specify and agree on the Project performance measures under which the Incentive is granted, and some of the conditions under which such Incentive can be modified or revoked by the City and/or State of Michigan. Nothing in this Agreement supersedes or diminishes any rights of the City or the State established by Federal, State, or Local law or regulations.								
6. The Lansing City Treasurer has a late on any property taxes owed to the twenty-five percent (25%) or more interest.	e City for all propert							

7.	T	he	Lansing City	Treas	urer	has verifi	ed in	writing	the Applicar	it, if	an emplo	yer in the
City,	is	in	compliance	with	all	required	City	wage	withholding	and	income	reporting
requi	rem	ent	s for all of the	ir emp	loy	ees.						

- 8. The Lansing City Treasurer has verified in writing the Applicant is not delinquent and/or late on any corporate or other business income taxes owed the City, if any.
- 9. The LEDC has verified that all application fees due have been paid in full by the Applicant.

IV. AGREEMENT:

NOW, THEREFORE, in consideration of the recitals and mutual covenants and agreements herein contained and pursuant to MCL _____ (the "Act"), as amended, the Parties agree as follows:

A. Reliance on Recitals

The Parties acknowledge Applicant has made representations contained within its application, and the recitals and additions above, with the purpose and intent of City's reliance thereon, as well as for compliance with the Act, as amended, and the City relies upon these representations in its determination that the Incentive should be approved.

B. Project Area

The location of the Project is commonly known as [insert address] ("Project Area") and legally described as follows:

[Insert legal description here]

C. Project Timeframe.

The Applicant and City agree the City's approval of the Incentive is based upon completion of the Project within a specific time period ("Project Timeframe"). The Project Timeframe starts _____ and ends _____.

D. Project Completion

The Applicant and the City agree that for the Project to be considered complete, the Applicant must perform all of the following in the Project Area within the Project Timeframe ("Project Completion"):

1.	Hire at least	new, permanent full-time equivalent employees (FTE) a	and/or
	retain at least	full-time equivalent employees (FTE).	

- 2. Purchase and/or locate within the Project Area, personal property with a fair market value of at least \$______. This personal property may not be moved to the Project Area from another location within the City of Lansing.
- 3. Make at least \$_____ of improvements to the real property. Improvements include only hard costs, and exclude architectural and engineering costs.
- 4. Obtain all necessary building permits and site plan approvals, including payment of all required fees, plus final inspections including a Certificate of Occupancy from the City of Lansing and all other appropriate authorities and agencies.
- 5. Upon Project Completion, the applicant will provide to the LEDC, upon request, any and all appropriate financial records that are referenced as part of this Agreement.
- 6. Project Completion must be performed by [insert date].

E. <u>Project Completion Progress Reports</u>

The Applicant shall file an annual report with the LEDC on the Applicant's progress toward achieving Project Completion. Reports shall be submitted in compliance with all LEDC reporting requirements. Applicant understands and agrees that the information submitted to the LEDC will be available for public viewing, unless prior approval is requested and granted for specific confidential business information that is not subject to disclosure under the Freedom of Information Act (Public Act 442 of 1976, being MCL 15.231 et. seq., as amended). Noncompliance with reporting requirements may result in the modification or revocation of the Incentive.

Lack of performance and compliance with this agreement, may be considered as relevant information in consideration of the approval of all future incentive applications to the LEDC or City by the Applicant or any person or entity with (25%) or more ownership in the Project.

F. <u>Verification of Project Completion</u>

No later than thirty (30) days after the end of the Project Timeframe, the Applicant shall provide in writing to the LEDC a Final Project Completion Report ("Final Report") with proof of Project Completion. Acceptable forms of proof may include, as directed by LEDC, proof of employment, proof of paid invoices, executed and filed tax documentation, final financing documents and similar material which confirm original financial data, engineering and architectural "as-built" drawings, photographs, and other like evidence of completion of the Project in the Project Area. If at any time during the Project Timeframe the Applicant completes the Project as agreed upon in Section (4), the Applicant may submit the Final Project Completion Report to the LEDC.

G. Consideration of Applicant's Compliance with the Agreement.

Within 60 days of receiving the Final Report, or 90 days after the end of the Project Timeframe, the LEDC shall make a preliminary determination if the Applicant has achieved Project Completion. In the event the preliminary determination concludes the Project was completed per this Agreement, written notification of such finding shall be sent from the LEDC to the Applicant and the City of Lansing Finance Director. In the event the LEDC makes the determination the Applicant did not complete the project per this Agreement, the LEDC will forward in writing its findings and a recommended course of action to the Applicant and the City of Lansing Finance Director. Prior to any action that might lead to the modification or revocation of all or part of the Incentive, the City shall offer the Applicant the reasonable opportunity to appear before the Council and be heard. In the event of the revocation of all or part of the Applicant's Incentive, the City may consider the breach of contract when contemplating the approval of all future Incentive applications to the City by the Applicant or any partners listed as required in the Recitals.

H. Failure of Applicant to Pay Tax Applicable to Personal Property

If any property tax applicable to the personal property that makes up the project is not paid within the time permitted by law for payment without penalty during the life of the Incentive being granted by this Agreement, the City may seize and sell the personal property to pay the tax, expenses of sale, and interest on the tax, or may commence civil litigation to recover the amount of tax an interest thereon, in accordance with Michigan law.

I. Failure of Applicant to Pay Tax Applicable to Real Property

If any property tax applicable to the real property that makes up the project is not paid within the time permitted by law for payment without penalty during the life of the Incentive being granted by this Agreement, the City may place a lien on the real property. The City may enforce the lien in the same manner as provided by law for the foreclosure in the circuit courts of mortgage liens upon real property, in accordance with Michigan law.

J. City's Rights under Act

Nothing in this Agreement shall supersede the City's ability to request the State Tax Commission to revoke the Incentive as otherwise provided, or as may hereafter be provided, under the Act, as amended. Nothing in this Agreement supersedes or diminishes any rights of the City or the State established by Federal, State, or Local law or regulations.

K. Ambiguity

If this Agreement or any of its terms and conditions are determined to be ambiguous, this Agreement and all its terms and conditions shall be considered as if drafted by both parties.

L. Rights and Remedies Cumulative

The Parties shall have all the rights and remedies available at law, in equity or in this Agreement to enforce the rights and obligations under this Agreement. All remedies shall be cumulative and none will be exclusive of any other. The exercise by either party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach or of any of its remedies for any other default or breach by the other party. No waiver made by either such party with respect to the performance, or manner or time thereof, or any obligation under the Agreement shall be considered a waiver of any rights of the party making the waiver with respect to the particular obligation of the other party or condition to its own obligation beyond those expressly waived in writing and to the extent thereof, or a waiver in any respect in regard to any other rights of the party making the waiver or any other obligations of the other party.

M. Right In Third Parties

This Agreement is not intended nor shall it create any rights, expectations or benefit to any third parties, including any creditor of the parties.

N. Severability

The invalidity of any portion of this Agreement shall not affect the validity of the remainder thereof.

O. Subsequent Waivers

One or more waivers of any provision, covenant, or condition of this Agreement shall not be construed as a waiver of a subsequent breach of the same provision, covenant, or condition, or as a waiver of a subsequent breach of other provisions, covenants, or conditions. The consent or approval to or for any act shall not be deemed to render unnecessary the consent or approval to or for any subsequent similar act.

P. Termination

This Agreement terminates upon ______, or upon the written agreement of the Parties.

Q. <u>Authority</u>.

The Applicant's execution, delivery and performance of this Agreement have been duly authorized. The Applicant's representative executing this Agreement does so with requisite authority to fully and completely bind the Applicant.

IN WITNESS WHEREOF, the undersigned Parties hereto execute this Agreement as of the day and year first above written.

WITNESSES:	APPLICANT NAME:
	By:
	Its:
	CITY OF LANSING:
	By:Virg Bernero
	Its: Mayor
	LANSING ECONOMIC DEVELOPMENT CORPORATION:
	By:Robert L. Trezise, Jr.
	Ita: Dragidant and CEO
Approved as to form:	I hereby certify that funds are available in Account No.:
Brigham Smith	City
City Attorney	Controller

[END OF AGREEMENT TEMPLATE]

3. The form of this Agreement may be revised from time to time upon recommendation to the Mayor by the Board of Directors of the Lansing Economic Development Corporation.

This Executive Order, signed on this *Late* day of November, 2008 shall remain in effect until it is rescinded or superseded.

Virg Bernero, Mayor of the City of Lansing